

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5704 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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KISHORBHAI NARSINHBHAI YADAV THRO.KANTIBHAI NARSINHBHAI -
Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR TUSHAR MEHTA for Petitioner(s) : 1,
 DELETED for Respondent(s) : 1,
 MR RC KAKKAD for Respondent(s) : 2,
 MR SHIRISH JOSHI for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 19/06/2006

ORAL JUDGMENT

1) Rule. Learned advocate Shri Kakkad waives service of rule on behalf of respondent no.2 and learned advocate Shri Joshi for respondent no.3. At the joint request

made by learned advocates appearing for the parties, the petition is taken up for final disposal today.

2) In the present petition, the petitioner who had initiated a Lavad Suit No. 271/03 before the Registrar, Board of Nominees, Rajkot has challenged the orders passed by the Board of Nominees as upheld by the Gujarat State Co-operative Tribunal. By an order dated 18th June, 2005, the Board of Nominees had rejected the suit of the petitioner on the preliminary issue raised by respondent no.3 herein about the maintainability of the proceedings. The petitioner appealed against the said suit. The appeal however came to be rejected by the impugned order passed by the Gujarat State Co-operative Tribunal on 16th March, 2006.

3) I find that the question of maintainability of the suit filed by the petitioner could not have been decided as the preliminary issue since the same require leading of evidence. In fact though the petitioner had agreed before the Board of Nominees that the issue may be decided as preliminary issue, he had specifically stated that the same should be done after leading of evidence in this regard and that without which the suit cannot be

dismissed. Further, I also find that respondent no.3 herein through her learned advocate stated before the Co-operative Tribunal that she has no objection for remanding of the proceedings and the issue of jurisdiction be decided at the time of final disposal of the suit. Considering all these aspects of the matter, I find that the proceedings are required to be remanded to the Registrar, Board of Nominees for fresh consideration. For the above purpose the impugned orders passed by the Board of Nominees and the Registrar being orders dated 18th June, 2005 and 16th March, 2006 respectively are quashed. The Board of Nominees shall dispose of the Lavad Suit filed by the petitioner after permitting both sides to lead evidence on record. Until such time, the Lavad Suit is disposed of by the Board of Nominees the interim arrangement recorded in the Court dated 28/3/2006 shall continue. To be specific this Court in its order dated 28/3/2006 provided that "Until the further orders, the status quo qua the land of plot No. 18B admeasuring 104.60 Sq. Mtrs. shall be maintained with the clarification that the present status quo shall not bar the respondent No.3 from making construction over the land of plot no. 18 admeasuring 473 Sq. Mtrs." It is further clarified that respondent no.3 shall not claim

any equity for having put such construction under the order of this Court. In addition to the above safeguard learned advocate Shri Joshi for respondent no.3 further stated that till final disposal of the Lavad Suit by the Board of Nominees, respondent no.3 shall not sell, transfer, alienate or in any other manner create any charge over plot No.18. The Board of Nominees shall dispose of the remanded proceeding without being influenced in any manner by this order, since I have not expressed any opinion on the merit and demerits of the rival contentions.

4) With these directions, the petition is disposed of. Rule is made absolute to the above extent. No order as to costs.

(Akil Kureshi, J.)

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